

Candace Burke Gales

May 14, 2008

1
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Raymond Gibson, :
Plaintiff, :
Case No. 07-377
vs. : Judge Marbley
Magistrate Judge Abel
The Shelly Company, :
Defendant. :
- - - - -

DEPOSITION OF CANDACE BURKE GALES

- - - - -
Taken at Spectrum Reporting LLC
333 East Stewart Avenue
Columbus, OH 43206
May 14, 2008, 9:49 a.m.

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Spectrum Reporting LLC
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Wednesday Morning Session
2 May 14, 2008, 9:49 a.m.
3 - - - - -

4 S T I P U L A T I O N S

5 - - - - -
6 It is stipulated by counsel in attendance that
7 the deposition of Candace Burke Gales, a witness
8 herein, called by the Plaintiff for
9 cross-examination, may be taken at this time by
10 the notary by notice and agreement that said
11 deposition may be reduced to writing in stenotypy
12 by the notary, whose notes may thereafter be
13 transcribed out of the presence of the witness;
14 that proof of the official character and
15 qualification of the notary is waived.

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1 A P P E A R A N C E S

2 ON BEHALF OF PLAINTIFF:

3 Teresa Cunningham, Esq.
4 71 Cavalier Boulevard, Suite 100
Florence, KY 41042

5 ON BEHALF OF DEFENDANT:

6 Frantz Ward
7 127 Public Square
8 Cleveland, OH 44114
9 By Brian J. Kelly, Esq.

10 ALSO PRESENT:

11 Raymond Gibson
12 Rob Sharrett

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<p>1 CANDACE BURKE GALES 2 being first duly sworn, testifies and says as 3 follows: 4 CROSS-EXAMINATION 5 BY MS. CUNNINGHAM: 6 Q. Could you state your name and spell it 7 for the record. 8 A. My name is Candace Burke Gales. 9 Q. My name is Teresa Cunningham. I 10 represent Ray Gibson in a case captioned Gibson 11 vs. Shelly Company. We're here today for your 12 deposition. Have you ever been deposed before? 13 A. Yes, ma'am. 14 Q. I'll be asking a series of questions. 15 If you don't understand a question or you can't 16 hear me, ask me to repeat it, otherwise I'll 17 assume that you understand the question. 18 A. Yes, ma'am. 19 Q. Okay. Where are you currently 20 employed? 21 A. The Shelly Company. 22 Q. And what is your position? 23 A. I'm the corporate EEO director. 24 Q. How long have you had that position?</p>	<p>5 1 females, correct? 2 A. Uh-huh, yes. 3 Q. Do you get involved with promotions? 4 A. No, ma'am. 5 Q. Why not? 6 A. That goes into a different category 7 that's outside the workforce. Once -- the 8 promotions are a part of the management. 9 Q. I don't understand what you mean. I 10 mean, is it your position that whether or not a 11 minority or a woman is promoted is not protecting 12 their rights or is there someone else in the 13 company that is there to -- 14 A. Well, I -- 15 Q. -- gauge that part of it? 16 A. There's somebody else in the company 17 that is engaged in that part of it. 18 Q. Who? 19 A. That would be the upper management, 20 which would go into the supervisory personnel, 21 such as Rob Sharrett and other office officials. 22 Q. Okay. So you only deal with, if it's 23 fair to say, the lower level employees? 24 A. Workforce that is unionized.</p>
<p>1 A. 11 years. 2 Q. And what are your job duties? 3 A. My job duties are to protect the rights 4 of minorities and females that work in the 5 construction industry and to monitor the state and 6 federal regulations as far as civil rights and 7 equal opportunity. 8 Q. What do you do on a daily basis? 9 A. I monitor all jobs that are awarded as 10 far as the subcontractor participation, making 11 sure that the minorities and female goals on all 12 the projects are filled. I report to the state, 13 the feds, the Department of Administrative 14 Services as far as the EEO numbers and the -- 15 MR. KELLY: Slow down just a little 16 bit. 17 THE REPORTER: You're fine. 18 A. As far as the reports, which are 19 documented -- documents that must go to the 20 Department of Administrative Services, FHWA 21 federal, under the federal guidelines OFPCP and 22 ODOT. 23 Q. Okay. You said that you essentially 24 monitor and protect the rights of minorities and</p>	<p>6 1 Q. The union workforce? 2 A. Yes, ma'am. 3 Q. You're familiar with ODOT's evaluation 4 process to see if the company is in compliance -- 5 A. Yes, ma'am. 6 Q. -- with all the regulations? 7 A. Yes, ma'am. 8 Q. That document that ODOT uses discusses 9 promotions, correct? 10 A. The MP29 that I report on a monthly 11 basis does not. 12 Q. No. I'm talking about the document 13 that ODOT uses. 14 A. Which document? 15 Q. Are you familiar with it? 16 The first page is called the Compliance 17 Date Report, Ohio Department of Transportation, 18 okay? 19 A. This is the process that's called the 20 compliance review process. 21 Q. Okay. 22 A. And when we receive that document, 23 there are questions that have to be answered. And 24 it's not just me answering the questions. I</p>

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1 sometimes have to go to the VPs, to the payroll or
 2 to HR to gather the data. And they give me the
 3 data that I put in the report.

4 Q. Are you responsible for the information
 5 that is given to ODOT in that compliance report?

6 A. The data is given to me and I give it
 7 to ODOT, no.

8 Q. I understand that. But are you
 9 ultimately responsible?

10 A. No, no.

11 Q. No, you're not.

12 Okay. This document does address
 13 promotions, correct?

14 A. Yes.

15 Q. Who gives you the information regarding
 16 promotions?

17 A. I get it from payroll and also from the
 18 VPs that I interview.

19 Q. Do you specifically interview the VPs
 20 regarding promotions?

21 A. I send them an e-mail and ask them what
 22 promotions they've had in whatever time period
 23 that ODOT is reviewing the process for.

24 Q. Okay. Can I have that back, please.

9

1 Q. Okay. Do you feel that as part of the
 2 EEO laws -- and you're well-versed in those,
 3 correct?

4 A. Yes, ma'am.

5 Q. -- that a part of those EEO laws is
 6 that there's no discrimination regarding
 7 promotions?

8 MR. KELLY: Objection. Are you asking
 9 -- she's here as a fact witness. Are you asking
 10 her opinions?

11 MS. CUNNINGHAM: Well, she deals in
 12 this area. I'm asking her if EEO laws cover
 13 promotions.

14 MR. KELLY: Okay. I'm going to object
 15 to the question. If you have an opinion, you can
 16 answer it.

17 MS. CUNNINGHAM: Okay.

18 A. Yes.

19 Q. Okay. But you don't address that?

20 A. No, ma'am.

21 Q. Have you ever questioned whether or not
 22 minorities and women were being fairly promoted
 23 with The Shelly Company?

24 A. No.

11

10 MR. KELLY: Yeah.

2 Q. So you send an e-mail and you ask them
 3 if there have been any promotions?

4 Yes, ma'am.

5 Q. Do you ask them if anyone has ever
 6 applied for a promotion?

7 A. I don't believe that question is asked.

8 Q. But that wasn't the question. Do you
 9 ask them?

10 A. No.

11 Q. Have you asked the upper management VPs
 12 whether or not there is a formal training
 13 program --

14 A. No.

15 Q. -- regarding the promotion of
 16 minorities or women?

17 A. No, I have not asked them that.

18 Q. Why?

19 A. That's not in my area of expertise.

20 Q. What do you mean by that?

21 A. I monitor the workforce, the unionized
 22 workforce. If they would ask me, then I would
 23 have to go to the VPs or to someone in management
 24 and ask them if anybody has been promoted.

10

1 Q. Okay. Why not?

2 A. I've never had an employee come to me
 3 and ask me to be promoted.

4 Q. Okay. Do you know what the promotion
 5 process is with The Shelly Company?

6 A. Vaguely.

7 Q. Tell me what you know.

8 A. That if there was an employee who would
 9 ask to be promoted, he would do that through his
 10 supervisory personnel, and it would be passed on
 11 to upper management.

12 Q. Who told you that?

13 A. It's what I know.

14 Q. How do you know that?

15 A. Well, based on what I hear and what I
 16 see and we've -- I've had no employee ask me that;
 17 but if somebody did, that's what would be my
 18 answer.

19 Q. Okay. As an EEO officer, have you had
 20 a conversation with any upper management regarding
 21 the process you should follow if an employee comes
 22 to you and asks to be promoted?

23 A. Not directly, no.

24 Q. Why not?

12

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1	A.	It's not my position.	13	1	Q.	Who do they offer it to?	15
2	Q.	Okay. Even as EEO officer, and you feel that promotions are a part of the EEO laws, you do not feel it's part of your job to question whether or not minorities or woman have ever been promoted in The Shelly Company?		2	A.	All employees.	
3				3	Q.	Okay.	
4				4	A.	Internal and external.	
5				5	Q.	Okay. Would this be the lower level people that we talked about?	
6				6			
7	A.	No.		7	A.	Yes, ma'am.	
8	Q.	Or the process that's used by The Shelly Company for promotions?		8	Q.	In that training do they discuss promotions?	
9				9			
10	A.	I don't get involved in that area.		10	A.	What happens is there's various people	
11	Q.	Okay. And who does?		11		that present presentations which comes from the	
12	A.	It would be the vice presidents and upper management.		12		president on down to the safety people, the EEO	
13				13		people, myself, human resources. And we talk	
14	Q.	Okay. Any other process that you know of for a unionized person -- I'm assuming that's the only people you deal with are unionized individuals?		14		about various subjects, and my subject is equal	
15				15		employment discrimination harassment.	
16	A.	Well, I take complaints from other people if they have complaints if they're internal or external.		16	Q.	But during these EEO seminars, conferences, meetings, do they discuss promotions?	
17	Q.	Okay. So would it be fair to say that you deal with hourly employees?		17			
18	A.	Occasionally.		18	A.	I don't believe so.	
19	Q.	Or low level employees?		19	Q.	Why not?	
20				20	A.	You would have to ask the vice presidents.	
21				21			
22	Q.	Have you ever questioned it?		22	Q.		
23	A.	No.		23	A.		
24	Q.	Why not?		24	Q.		
1	A.	Occasionally.	14	1	A.	It's not my area of expertise.	16
2	Q.	Certainly not management?		2	Q.	But your area of expertise is EEO,	
3	A.	Exactly.		3		correct?	
4	Q.	Are foremen considered management?		4	A.	Yes.	
5	A.	Excuse me?		5	Q.	Is there any sub area of EEO that's	
6	Q.	Are foremen considered management?		6		your area of expertise or is it --	
7	A.	Yes, ma'am.		7	A.	I've never had an employee approach me	
8	Q.	Okay. Do you deal with nonmanagement individuals?		8		in 11 years and ask for a promotion.	
9				9	Q.	Well, that wasn't the question that I	
10	A.	Yes, ma'am.		10		was -- is there any sub level of expertise other	
11	Q.	Any other process for promotions other than what we've discussed for a lower level employee to go into a foreman position?		11		than the EEO laws? I mean, you don't just	
12				12		specifically focus on sexual harassment?	
13				13	A.	No.	
14	A.	Will you ask me the question again?		14	Q.	Okay.	
15	Q.	We've discussed this promotion process as you understand it in The Shelly Company.		15	A.	I focus on all --	
16				16	Q.	You focus on all of them?	
17	A.	Yes.		17	A.	-- EEO.	
18	Q.	Is there any other process for an individual to be promoted other than the process we've talked about?		18	Q.	Have you talked to any of the VPs or	
19				19		any of the upper management that we've been	
20				20		talking about regarding if anyone has ever	
21	A.	Not that I'm aware of.		21		approached them and asked for a promotion?	
22	Q.	Does The Shelly Company offer EEO training?		22	A.	We've reviewed the promotions for the	
23				23		contract compliance review process. If a review	
24	A.	Yes, ma'am.		24		is coming up and I have asked for promotions, a	

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<p>1 list of them. If there are none, there was none 2 available for that time period, then that's what I 3 document for the compliance review process. 4 Q. Other than that, have you ever 5 discussed -- 6 A. No. 7 Q. Okay. So you don't know how many 8 openings come up -- 9 A. No. 10 Q. -- for promotions? 11 A. No. 12 Q. Have you ever asked? 13 A. No. 14 Q. And you've never asked about a training 15 program to be implemented for minorities and women 16 regarding promotions? 17 A. Not for promotions. 18 Q. Okay. You're given this information 19 from the VPs or upper management regarding 20 promotions when ODOT does their compliance review, 21 correct? 22 A. Uh-huh. Yes, ma'am. 23 Q. Correct? 24 This document, and you can turn to the</p>	<p>17</p> <p>1 A. Well, it's because that's our central 2 office location for our headquarters. 3 Q. Okay. Do you know Melody pretty well? 4 A. Yes. 5 Q. Are you friends? 6 A. Never been to her home, if that's what 7 you're referring to. No, we're business 8 associates. 9 Q. Business associates. 10 Have you ever been out to lunch with 11 her? 12 A. Yes. 13 Q. Okay. How often have you been out to 14 lunch with her? 15 A. I haven't been to lunch with Melanie 16 probably for a year or more. 17 Q. Okay. Would it be fair to say you go 18 to lunch with her maybe once a year? 19 A. No. 20 Q. Once every other year? 21 A. Maybe. 22 Q. Okay. Do you do that when she comes 23 out and does the review? 24 A. No.</p>
<p>1 page that's marked, if you would like, that 2 discusses promotions. But it states that they've 3 reviewed documents. 4 MR. KELLY: It states that who's 5 reviewed documents? 6 MS. CUNNINGHAM: That the ODOT person. 7 MR. KELLY: Why don't you -- if you are 8 going to refer to the document -- 9 MS. CUNNINGHAM: Let me finish the 10 question, and I'll -- you know, if she needs 11 clarification, we'll go there. 12 Q. Do you meet with -- and correct me if 13 I'm wrong, but it appears that Melody Farnsworth, 14 she's now married and it's Conrad. 15 A. Yes. 16 Q. She does the compliance reviews for 17 ODOT for The Shelly Company, correct? 18 A. Yes, ma'am. 19 Q. How long has she been doing these? 20 A. At best guess, probably 20-something 21 years. 22 Q. Okay. You always get the same person, 23 correct, that comes out from ODOT, it's always 24 Farnsworth?</p>	<p>18</p> <p>1 Q. You guys get together at other times? 2 A. Just if I want to have a meeting with 3 her. 4 Q. Why would you want to have a meeting 5 with Melody? 6 A. We talk about subcontractors, primes, 7 my workforce, if I have situations going on, if I 8 have any complaints, if I want to talk about 9 on-site. But that doesn't mean we've had lunch. 10 We may just meet and talk. 11 Q. Okay. Why would -- 12 A. Or I go to the district. 13 Q. Okay. Why would you meet Melody or go 14 to the district to address problems that you're 15 having? 16 A. That's the way EEO officers work 17 together to keep an open line of communication 18 between their central office, ODOT and the 19 contractors. 20 Q. Okay. Have you ever discussed 21 promotions -- 22 A. No. 23 Q. -- with Melody? 24 Okay. To your knowledge, has anyone in</p>

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<p>1 the company discussed promotions with Melody or 2 anyone from ODOT?</p> <p>3 A. Not that I'm aware of, other than the 4 document that's presented at the compliance 5 review.</p> <p>6 Q. All right. We'll get back to that.</p> <p>7 Are you aware of an evaluation process 8 for the promotion of minorities and women?</p> <p>9 A. No, ma'am.</p> <p>10 Q. Have you ever discussed the lack of an 11 evaluation process for the promotion of women and 12 minorities with anyone in upper management?</p> <p>13 A. Rob Sharrett and I have spoke about 14 evaluating persons if they come forward and ask to 15 be evaluated or want to be made part of the core 16 workforce.</p> <p>17 Q. What do you mean by "core workforce"?</p> <p>18 A. Well, we're unionized, and we have a 19 core workforce, which are people that work for us 20 traditionally year after year after year after 21 year.</p> <p>22 Q. Okay. So you're including those 23 seasonal people that are referred by the union?</p> <p>24 A. Yes, ma'am.</p>	<p>21</p> <p>1 unionized.</p> <p>2 Q. Where do you post it?</p> <p>3 A. They're posted on the Internet and in 4 the individual offices on their bulletin boards.</p> <p>5 Q. What do you mean by the "individual 6 offices"?</p> <p>7 A. We have divisions.</p> <p>8 Q. Okay. So in each division, so if 9 someone is sent in from the union and they're on a 10 road crew out in another county, they would have 11 to drive to -- let's do the Thornville Division. 12 They would have to drive to Thornville to your 13 main office and look at that bulletin board to 14 see --</p> <p>15 MR. KELLY: Objection. She also said 16 Internet.</p> <p>17 MS. CUNNINGHAM: I'll get there.</p> <p>18 A. They don't have to, they can look on 19 the Internet.</p> <p>20 Q. Well, but give me time to finish the 21 question, okay.</p> <p>22 If they're working out in another 23 county, they would have to drive into the office 24 and look on that bulletin board, correct?</p>	<p>23</p>
<p>1 Q. Okay. Okay. You said you discussed 2 evaluations if they come forward and request 3 information regarding being promoted?</p> <p>4 A. Uh-huh.</p> <p>5 Q. Are employees formally evaluated?</p> <p>6 A. I don't know. You would have to ask 7 upper management.</p> <p>8 Q. Have you ever seen --</p> <p>9 A. I don't evaluate anybody.</p> <p>10 Q. Have you ever seen an evaluation form?</p> <p>11 A. No, ma'am.</p> <p>12 Q. So if I'm understanding this correctly, 13 out of your core workforce, your union, your low 14 level employees, if someone comes forward to you 15 and asks to be promoted, then the company may take 16 a look at them for a promotion?</p> <p>17 A. I would tell them to go to their 18 foreman or superintendent or notify the VP in 19 their division.</p> <p>20 Q. Okay. Have these job openings ever 21 been posted?</p> <p>22 A. They would be, but I don't know of any.</p> <p>23 Q. What do you mean "they would be"?</p> <p>24 A. We post job openings if it's not</p>	<p>22</p> <p>1 MR. KELLY: No. I mean, you're 2 mischaracterizing her testimony.</p> <p>3 MS. CUNNINGHAM: You're not --</p> <p>4 MR. KELLY: To the extent you're going 5 to mischaracterize her testimony --</p> <p>6 MS. CUNNINGHAM: I'm not -- let me 7 finish my question, and if you want to object, you 8 can object.</p> <p>9 MR. KELLY: Sorry. I thought you had 10 finished your question.</p> <p>11 MS. CUNNINGHAM: No, I haven't.</p> <p>12 Q. If someone is working in an outside 13 county, they would have to drive to the central 14 office Thornville and look at the bulletin board 15 to see the job posting, correct?</p> <p>16 A. Yes, or the Internet.</p> <p>17 Q. Okay. We'll get to that. Or they have 18 to go to the Internet. Do you notify employees 19 when they are hired that job openings, promotions 20 are posted on the Internet, and here's the 21 company's website?</p> <p>22 A. I wouldn't be advising them of 23 anything, they're unionized.</p> <p>24 Q. So there's no notice sent out to the</p>	<p>24</p>

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<p>1 union as far as you know? When they come on a job 2 site, they're not handed a slip of paper that says 3 you can check this website for The Shelly Company 4 for any job openings?</p> <p>5 A. I don't have any communication with 6 them at all.</p> <p>7 Q. To your knowledge, that isn't done, 8 correct?</p> <p>9 A. No, not to my knowledge.</p> <p>10 Q. Have you ever discussed that with any 11 of upper management?</p> <p>12 A. No.</p> <p>13 Q. Why not?</p> <p>14 A. That's not in my area.</p> <p>15 Q. Okay. It's not in your area. But your 16 area is protecting the rights of minorities and 17 women?</p> <p>18 MR. KELLY: Objection. She's answered 19 that five times now.</p> <p>20 Q. Correct? Correct?</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. All right. What's the difference 23 between a foreman and a superintendent?</p> <p>24 A. A superintendent is the person who</p>	<p>25</p> <p>1 Q. Okay. You just don't remember, okay. 2 What areas does the Thornville Division 3 cover?</p> <p>4 A. Thornville, Athens, Hocking, Meigs, 5 Morgan, Noble, Vinton Counties. There's probably 6 a couple more I missed, but Southeastern Ohio, 7 east.</p> <p>8 Q. Thornville is southeastern Ohio?</p> <p>9 A. Yes, ma'am.</p> <p>10 Q. What area covers central Ohio?</p> <p>11 A. That's District 6.</p> <p>12 Q. What's District 6?</p> <p>13 A. Columbus.</p> <p>14 Q. Columbus broke out of the Thornville 15 Division, correct?</p> <p>16 A. Yes, ma'am.</p> <p>17 Q. In the period between '03 and '05 -- 18 was it '05 when Columbus broke out, '05 or '06, 19 correct?</p> <p>20 A. I don't know.</p> <p>21 Q. Around there, would that be fair to 22 say?</p> <p>23 A. I don't recall.</p> <p>24 Q. Okay. Before Columbus broke away from</p>	<p>27</p>
<p>1 really actually sets up the project, tells you who 2 the foreman is going to be and sets up the 3 project, gives the foremen the bulletin board 4 information, and sometimes does the call outs.</p> <p>5 Q. What do you mean by "the bulletin board 6 information"?</p> <p>7 A. There's a federal bulletin board with 8 state and federal requirements that must be posted 9 on all federal projects.</p> <p>10 Q. In 2003, were you aware if there were 11 any promotions in The Shelly Company?</p> <p>12 A. I don't have any idea unless I had 13 files in front of me.</p> <p>14 Q. Okay. How about 2004?</p> <p>15 MR. KELLY: Are we talking entire 16 corporate wide because this case is --</p> <p>17 MS. CUNNINGHAM: I understand.</p> <p>18 MR. KELLY: Our discovery in the case 19 is about the division here, but --</p> <p>20 A. I'd have to see the paperwork.</p> <p>21 Q. Okay. You have no idea?</p> <p>22 A. It's not that I don't have any idea. I 23 don't remember. I don't recall. It's 2008. I'd 24 have to see it.</p>	<p>26</p> <p>1 Thornville, did Thornville cover all of central 2 Ohio?</p> <p>3 A. Yes, ma'am.</p> <p>4 Q. In 2003, 2004 and 2005, are you aware 5 of any minority foremen? To your knowledge were 6 there any minority foremen?</p> <p>7 A. Yes.</p> <p>8 Q. Who?</p> <p>9 A. Donald Mayle.</p> <p>10 Q. How do you spell his last name?</p> <p>11 A. M-A-Y-L-E.</p> <p>12 Q. Where did he work?</p> <p>13 A. Thornville.</p> <p>14 Q. And how long has he been with the 15 company?</p> <p>16 A. He was there before I came there. I 17 don't know Don's years.</p> <p>18 Q. What race?</p> <p>19 A. He's black. And my minority foremen, 20 there's Trevor Small.</p> <p>21 Q. What is Mr. Small's race?</p> <p>22 A. American Indian.</p> <p>23 Q. And when was he promoted, do you 24 remember?</p>	<p>28</p>

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1 A. Oh, I don't have any idea. 2 Q. Before you started? 3 A. No. No. Not before I started. 4 Q. Was he promoted in 2003, 2004? 5 A. I don't have any idea. I wouldn't 6 know. I don't do promotions. 7 Q. Okay. Anyone else? 8 A. Trevor Small's a superintendent. And 9 Jeff Barnes is an American Indian, and I believe 10 his title is foreman. You'll have to get 11 clarification from the VPs. 12 Q. Trevor Small is actually a 13 superintendent? 14 A. I believe that's his title. 15 Q. So he's not a foreman? 16 A. I -- I'm not sure what his title is 17 because one of them is a superintendent and one of 18 them is a foreman. 19 Q. Okay. So either Jeff Barnes or 20 Mr. Small is a foreman, and the other one is a 21 superintendent? 22 A. I believe so. 23 Q. Okay. What's Ms. Barnes' race? 24 A. American Indian.	29	1 it's your understanding there should be a 2 personnel file for Mr. Gibson? 3 A. The HR department just began keeping 4 personnel files, I believe, last year. 5 Q. So prior to 2006, say 2005 back, the 6 company did not maintain personnel files? 7 A. I believe that's right. 8 Q. Where do they maintain these incident 9 reports? You know what I'm talking about, don't 10 you? 11 A. Incident reports, no. I don't know 12 what you're talking about. 13 Q. There are incident reports when there's 14 a safety -- generally a safety -- some type of 15 violation, there are incident reports that fills 16 out what happened and those go to the safety 17 committee. And I don't have one with me, or I 18 would show it to you. 19 A. The legal counsel would have them. 20 Q. They stay in legal counsel's 21 department? 22 A. I believe so. 23 Q. Do you know how they're categorized 24 or --	31
1 Q. Do you know what tribe? 2 A. No. 3 Q. How long has Mr. Barnes worked for the 4 company? 5 A. I have no idea. 6 Q. Was he there before you started? 7 A. Yes. 8 Q. Okay. And I'm sorry. Did you say 9 Mr. Small was there before you started too? 10 A. Yes. 11 Q. Okay. Have any minorities, to your 12 knowledge, been promoted into foreman positions 13 since you've worked for the company? 14 A. Not that I'm aware of, no. 15 Q. Does the company maintain personnel 16 files? 17 A. Yes, ma'am. 18 Q. Okay. On which employees? 19 A. I believe everybody. It comes from the 20 HR department. 21 Q. Is there a personnel file for 22 Mr. Gibson? 23 A. I wouldn't know. 24 Q. Well, he's worked for the company. So	30	1 A. You would have to ask upper management 2 or -- 3 Q. Alphabetically or -- you have no idea? 4 A. You would have to ask upper management. 5 Q. Prior to -- and let's just focus on 6 prior to '06, '05 and back. You said that the 7 company doesn't keep personnel files? 8 A. We did not have an HR department at 9 that time, yes, ma'am. 10 Q. Did they maintain any information on 11 employees? 12 A. If there were issues or complaints, is 13 that what you're asking? 14 Q. Just any information. 15 A. If there was a complaint, there would 16 be a file. 17 Q. So they had a complaint file? 18 A. If there was an investigation done, 19 yes, ma'am. 20 Q. Okay. Any other reason that there 21 would be a file kept for an employee? 22 A. No, ma'am. 23 Q. Okay. And I am sorry, I may have asked 24 you this. But have you ever seen an evaluation	32

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<p>1 form for an employee?</p> <p>2 A. No, ma'am.</p> <p>3 Q. Okay. So it would be fair to say</p> <p>4 employees are not evaluated?</p> <p>5 A. I believe that they're in the process</p> <p>6 in the HR department of creating one. But I don't</p> <p>7 know that it exists yet.</p> <p>8 Q. Okay. Just prior to '06?</p> <p>9 A. No, ma'am.</p> <p>10 Q. There was no evaluation?</p> <p>11 A. Not that I'm aware of.</p> <p>12 Q. Okay. Was there ever an evaluation</p> <p>13 process?</p> <p>14 A. You would have to ask upper management.</p> <p>15 Q. Okay. Did you ever question upper</p> <p>16 management about the lack of an evaluation or an</p> <p>17 evaluation process?</p> <p>18 A. No, ma'am.</p> <p>19 Q. Why not?</p> <p>20 A. It's not my area of expertise.</p> <p>21 Q. So if -- and this may be very</p> <p>22 simplified terms, but your job is simply to take</p> <p>23 the numbers and match them up to make sure there</p> <p>24 is a minimum number of minorities working for The</p>	33	<p>1 Q. So if you need a minority to fill a</p> <p>2 slot to meet the goals, then you -- someone, you</p> <p>3 or someone calls the union and says, hey, send</p> <p>4 over a minority to fill them in on whatever job?</p> <p>5 A. Yes. That's done normally by another</p> <p>6 person.</p> <p>7 Q. So they fill that slot and you can put</p> <p>8 in the numbers to meet --</p> <p>9 A. Percentage.</p> <p>10 Q. -- the quotas?</p> <p>11 A. We don't do quotes.</p> <p>12 Q. But it's numbers?</p> <p>13 A. It's goals.</p> <p>14 Q. Okay. It's not quotas but it's goals,</p> <p>15 okay.</p> <p>16 Have you ever -- has The Shelly Company</p> <p>17 ever gone out and just recruited and hired more</p> <p>18 minorities than they actually needed for these</p> <p>19 jobs?</p> <p>20 A. Yes.</p> <p>21 Q. When was that?</p> <p>22 A. On our on-the-job training program.</p> <p>23 Based on the 23CFR, we have only minorities and</p> <p>24 females in our on-the-job training program.</p>	35
<p>1 Shelly Company to meet the statistics for the</p> <p>2 federal and state contracts?</p> <p>3 A. I do all the reporting for the federal</p> <p>4 and state requirements, yes.</p> <p>5 Q. I mean, that's fair to say that's your</p> <p>6 job?</p> <p>7 A. Part of it, yes.</p> <p>8 Q. Okay. And then you'll take complaints</p> <p>9 if someone comes in and complains about something?</p> <p>10 A. Yes, ma'am.</p> <p>11 Q. You investigate those.</p> <p>12 A. And what else do you do?</p> <p>13 A. That's what I do.</p> <p>14 Q. That's it, those two things?</p> <p>15 A. So it would be fair to say that if a</p> <p>16 contract comes in, you look at it and you make</p> <p>17 sure that there are enough minorities and women</p> <p>18 working on that specific contract in order to meet</p> <p>19 the requirements under the state and federal regs?</p> <p>20 A. Once the job is awarded, I start</p> <p>21 looking at the project to make sure the</p> <p>22 subcontractors have been awarded and that we are</p> <p>23 in line to meet our goals as far as the state and</p> <p>24 federal requirements.</p>	34	<p>1 Q. Tell me about the on-the-job training</p> <p>2 program.</p> <p>3 A. It's a federal program that's set up by</p> <p>4 FHWA which is a Federal Highway Administration,</p> <p>5 which is a program that you train employees on</p> <p>6 site for a certain period of time, whether it's</p> <p>7 from first year to journeyman status or through</p> <p>8 the laborers or through the operators and</p> <p>9 teamsters, and to see to it that they get</p> <p>10 on-the-job training so that they can initially</p> <p>11 become part of the core workforce.</p> <p>12 Q. And correct me if I'm wrong, but</p> <p>13 they're generally laborers who have no training,</p> <p>14 no experience, and you bring them in and give them</p> <p>15 training?</p> <p>16 A. No, ma'am.</p> <p>17 Q. No, I must misunderstand then. Tell me</p> <p>18 exactly what the status of these individuals are</p> <p>19 and what you train them to do.</p> <p>20 A. They can be laborers, they can be</p> <p>21 operators, they can be teamsters. If they're</p> <p>22 operators, they're normally in the apprenticeship</p> <p>23 program that comes through the operators union.</p> <p>24 They can be apprentices as a first year, second</p>	36

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<p>1 year, third year, and fourth year through 2 journeymanship status. If they're laborers, we 3 now participate in the laborers apprenticeship 4 program, which brings out trainees that are going 5 through a specific program with the laborers, 6 which just was authorized as of January 1, '08; 7 and they are given an apprenticeship status so 8 they can come out with the journeymen in the 9 laborers program so they can be trained to get 10 sufficient training before they move into the 11 journeymanship status. Prior to that, they were 12 recruited through various agencies, entities, such 13 as people who have had no experience and were not 14 part of the apprenticeship program but came out 15 and were given status based on the fact that there 16 wasn't a program in place.</p> <p>17 Q. On average, how many people are in this 18 on-the-job training program?</p> <p>19 A. I have four per division.</p> <p>20 Q. I'm sorry?</p> <p>21 A. I have four per division.</p> <p>22 Q. Okay. Four per division, okay.</p> <p>23 Are you aware of the value of the 24 contracts that Shelly is awarded?</p>	37	<p>1 A. You would have to look at the monthly 2 reports.</p> <p>3 Q. By how much do you exceed it?</p> <p>4 A. You would have to look at the monthly 5 reports.</p> <p>6 Q. Couldn't say on an average?</p> <p>7 A. No.</p> <p>8 Q. Okay. Any other -- you've talked about 9 this on-the-job training, and then that's extra 10 people that -- extra minorities that come in and 11 work. Any other recruitment that is done to bring 12 in minorities, other than just calling the union 13 and saying we need a minority on this job, send 14 them over to meet our stats?</p> <p>15 A. There is a process that's utilized.</p> <p>16 Q. I'm sorry?</p> <p>17 A. There's a process that's utilized.</p> <p>18 Q. What's the process?</p> <p>19 A. If you are told by the union that if 20 the union does not have a minority or female upon 21 request, we can at that time go off the bank and 22 recruit, if need be, as I do for the OJT training 23 program.</p> <p>24 Q. What do you mean "go off the bank"?</p>	39
<p>1 A. Am I aware of what?</p> <p>2 Q. The value of the contracts? The --</p> <p>3 A. The dollar amount.</p> <p>4 Q. Yes. The contract price?</p> <p>5 A. Oh, yes.</p> <p>6 Q. Okay. So to come up with your stats, 7 you look at the number of man-hours and people in 8 the population and that sort of thing to come up 9 with this percentage that should be minorities?</p> <p>10 A. The percentage is given to us.</p> <p>11 Q. Oh, it's given to you by the state?</p> <p>12 A. Yes.</p> <p>13 Q. Oh, okay.</p> <p>14 A. And the feds.</p> <p>15 Q. Okay. So would it be fair to say, 16 though, that The Shelly Company just meets those 17 figures?</p> <p>18 A. We show a good faith effort to achieve 19 the goal or exceed it.</p> <p>20 Q. But would it be fair to say that they 21 just meet those stats?</p> <p>22 A. It would be fair to say that we exceed 23 it.</p> <p>24 Q. Okay. How much do you exceed it?</p>	38	<p>1 A. It means if the union doesn't have a 2 person available to fit the job description that I 3 need or the employee that I've requested. Then 4 it's up to the union to document that, tell me 5 they cannot fill the request for a minority or 6 female, then I do have the option to advise the 7 superintendent that then he must look elsewhere.</p> <p>8 MR. KELLY: Teresa, I -- just since you 9 weren't in the first case, I'm not sure one of the 10 documents reviewed, but it may be helpful on this 11 for you to know the company has signed collective 12 bargaining agreements with the union, so it has to 13 hire through the union, it just can't go down to 14 the local high school or whatever it may be. Are 15 you aware of that?</p> <p>16 MS. CUNNINGHAM: Yeah.</p> <p>17 Q. Okay. When a job comes up, new jobs 18 bid, they get it, explain the process to me for 19 getting individuals to fill that, fill the 20 positions.</p> <p>21 A. I'm not comfortable going through that 22 process because I don't do that process. I would 23 be second-guessing what the superintendents' 24 call-out procedure is.</p>	40

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1 Q. But they would have to call the union?
 2 A. Yes, ma'am.
 3 Q. Do you know if it's seniority?
 4 A. They --
 5 Q. By seniority?
 6 A. I don't know.
 7 Q. You have no idea?
 8 Okay. Now, back to this document we
 9 talked about ODOT and these compliance reviews.
 10 On page 8 under Training -- it's going to be
 11 Training. And this -- we'll just use this as an
 12 example, it's the January I believe -- January
 13 25th, 2007 report that was done by Ms. Farnsworth,
 14 there is a section that is marked, "Is there an
 15 evaluation process conducted annually of at least
 16 all minority and female personnel for promotional
 17 opportunities to encourage these individual to
 18 seek or prepare for such opportunities?"
 19 Do you see that marked?
 20 A. Let's see. Voluntary on-the-job
 21 training program?
 22 Q. It's down further.
 23 A. This part. Is there an evaluation
 24 process and -- okay.

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1 MS. CUNNINGHAM: I thought you had one
 2 of these. They're all the same. This is the
 3 January 25th, 2007 one.
 4 MR. KELLY: So this is about two years
 5 after Ray's last termination?
 6 MS. CUNNINGHAM: Right.
 7 MR. KELLY: Okay. Just so we're clear
 8 for the record.
 9 MS. CUNNINGHAM: We can go through the
 10 other ones.
 11 Q. "Documentation Provided," it's got
 12 copies of EEO officers' job description, records,
 13 reports, analysis and diaries relating to
 14 monitoring and action taken as a result of
 15 monitoring. Do you see that after documentation?
 16 A. Yes, ma'am.
 17 Q. All right. Did you provide any
 18 documentation to Ms. Farnsworth?
 19 A. You've got marked "yes," job
 20 description, I would have given her that.
 21 Documentation of all employee promotions and pay
 22 increases, there would have been a section marked
 23 for that. List of employees promoted, there
 24 should have been a section for that. And copies

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1 Q. Yes. But there's an X in the "yes"
 2 box. Did you provide that information to
 3 Ms. Farnsworth?
 4 A. It would have been the information that
 5 would have been given to me by the vice
 6 presidents.
 7 Q. Okay. So you didn't get involved in
 8 that at all?
 9 A. No.
 10 Q. Okay. Can I see the document?
 11 And you didn't discuss this evaluation
 12 process with anyone, they just gave you -- the
 13 upper management gave you the information, you
 14 passed it along to Ms. Farnsworth?
 15 A. Yes, ma'am.
 16 Q. Okay. The next section is
 17 "Documentation Provided."
 18 MR. KELLY: And I'm sorry. What's --
 19 what's the date of the document? Obviously, you
 20 made a copy so I --
 21 MS. CUNNINGHAM: I'm sorry. I didn't
 22 plan on --
 23 MR. KELLY: It's okay. I just want to
 24 know what we're talking about.

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1 of the employment evaluation, there would have
 2 been -- there's no mark there at all, so there
 3 probably wasn't a section. And the CR1 reports,
 4 which are now void, we don't even do that report
 5 anymore.
 6 Q. Okay. So I'm sorry. You did give her
 7 those -- that documentation that you covered?
 8 A. If it's marked there, there should be
 9 documentation in the review.
 10 Q. Okay.
 11 - - - - -
 12 Thereupon, Deposition Exhibit 1 is marked
 13 for purposes of identification.
 14 - - - - -
 15 Q. I'm handing you what's been marked as
 16 Exhibit 1.
 17 If I could have the '07 back to make it
 18 easier. Take a few minutes and look at that
 19 document.
 20 A. I've never even seen this document.
 21 MR. KELLY: Okay. Did you -- Teresa,
 22 she's indicating she's never seen portions of this
 23 document.
 24 Q. Okay. But does she want to take her

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<p>1 time and look through all of it?</p> <p>2 MR. KELLY: I just wanted you to</p> <p>3 understand what she was saying.</p> <p>4 Q. Okay. You've had an opportunity to</p> <p>5 look at Plaintiff's Exhibit 1. It was your</p> <p>6 testimony that you've never seen this document</p> <p>7 before?</p> <p>8 A. No.</p> <p>9 Q. Okay. Will you turn to page 8 --</p> <p>10 A. I've never seen this page.</p> <p>11 Q. Oh, just the first page. You've seen</p> <p>12 the rest of it but never the first page?</p> <p>13 A. This is the part of the compliance</p> <p>14 review that I never -- I never receive this whole</p> <p>15 entire outline complete.</p> <p>16 Q. Okay. I don't understand. So you've</p> <p>17 only seen parts of it?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Could you turn to page 8,</p> <p>20 please. Now, this is the page that we were</p> <p>21 talking about in the '07 that talks about</p> <p>22 documentation provided.</p> <p>23 A. Uh-huh.</p> <p>24 Q. Now, under the section marked</p>	<p>45</p> <p>1 management.</p> <p>2 Q. Oh, you didn't have a personnel</p> <p>3 department then?</p> <p>4 A. Yes.</p> <p>5 Q. So it would be upper management?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. The next one is list of</p> <p>8 employees promoted, that's marked. You would have</p> <p>9 given Ms. Farnsworth documentation of employees</p> <p>10 that were promoted?</p> <p>11 A. If there were any.</p> <p>12 Q. Correct, if there were any. Or you</p> <p>13 would give her the documentation. But you didn't</p> <p>14 come up with that documentation --</p> <p>15 A. No.</p> <p>16 Q. -- upper management did?</p> <p>17 A. Yes, ma'am.</p> <p>18 Q. All right. What about the copies of</p> <p>19 the CR1 reports, would you have given those to</p> <p>20 Ms. Farnsworth?</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. Did you create those or did those come</p> <p>23 from upper management?</p> <p>24 A. They're computerized.</p>	47
<p>1 "Documentation Provided," it's got an X in front</p> <p>2 of copies EEO officers' job description, records,</p> <p>3 reports, analysis and diaries relating to</p> <p>4 monitoring and action taken as a result of</p> <p>5 monitoring. Did you physically provide those</p> <p>6 documents to Ms. Farnsworth?</p> <p>7 A. This is from 2005. I believe so.</p> <p>8 Q. So would you have those documents in</p> <p>9 your office or would someone from upper management</p> <p>10 give them to you and you would give them to Ms.</p> <p>11 Farnsworth?</p> <p>12 A. Based on my job description, records,</p> <p>13 reports. The diaries would have come from upper</p> <p>14 management. If I had an on-site where there was</p> <p>15 an issue or a problem, then she would have had it,</p> <p>16 it would have been attached.</p> <p>17 Q. Okay. The next section is</p> <p>18 documentation of all field employees, promotion</p> <p>19 and our pay increases, and that's marked. Would</p> <p>20 you have given Ms. Farnsworth this documentation?</p> <p>21 A. I would have given her the</p> <p>22 documentation, but it wouldn't have come from me.</p> <p>23 Q. It would have come from personnel?</p> <p>24 A. It would have come from upper</p>	<p>46</p> <p>1 Q. They're computerized. But did you</p> <p>2 create them?</p> <p>3 A. I hit a button.</p> <p>4 Q. You hit a button?</p> <p>5 Okay. You input the information?</p> <p>6 A. No, ma'am.</p> <p>7 Q. A clerk somewhere does?</p> <p>8 A. It comes out of payroll.</p> <p>9 Q. Okay. Do you guys have a copier that I</p> <p>10 can make copies? Let's go off the record.</p> <p>11 (A short recess is taken.)</p> <p>12 - - - - -</p> <p>13 Thereupon, Deposition Exhibit 2 is marked</p> <p>14 for purposes of identification.</p> <p>15 - - - - -</p> <p>16 Q. Okay. We're back on the record.</p> <p>17 Before we go there, you talked about this Internet</p> <p>18 posting of job openings. When did that start?</p> <p>19 A. 2008.</p> <p>20 Q. 2008.</p> <p>21 So it would be fair to say prior to</p> <p>22 2006, 2005 backwards, there was no Internet</p> <p>23 posting of jobs?</p> <p>24 A. Prior to?</p>	48

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	<p>49</p> <p>1 Q. 2006.</p> <p>2 A. No.</p> <p>3 Q. Prior to 2008 there wasn't?</p> <p>4 A. No.</p> <p>5 Q. What month of this year did it start?</p> <p>6 A. I don't recall. It comes out of HR.</p> <p>7 January, December, something like that.</p> <p>8 Q. Okay. In 2003, 2004 and 2005 where</p> <p>9 were jobs posted? First of all, were they?</p> <p>10 A. They just started the Internet process.</p> <p>11 They were posted internally through the -- it</p> <p>12 comes out of HR. I -- I don't know when they</p> <p>13 started or even how they did it.</p> <p>14 Q. Okay. If I understood your testimony,</p> <p>15 though, during those years there wasn't even a</p> <p>16 personnel department?</p> <p>17 A. There wasn't.</p> <p>18 Q. So I don't understand how it could come</p> <p>19 out. Just focus on 2003, 2004, 2005. There</p> <p>20 wasn't a personnel department --</p> <p>21 A. There wasn't a personnel department,</p> <p>22 no. We --</p> <p>23 Q. So were jobs --</p> <p>24 A. We just had a person monitoring the</p>		<p>51</p> <p>1 employees to have access to?</p> <p>2 A. Interoffice.</p> <p>3 Q. So you're saying jobs were posted on</p> <p>4 this bulletin board for positions that were</p> <p>5 nonunion?</p> <p>6 A. Interoffice positions.</p> <p>7 Q. What do you mean, like secretaries?</p> <p>8 A. I'm construction, yes.</p> <p>9 Q. Secretaries, office work?</p> <p>10 A. Right.</p> <p>11 Q. So there was nothing posted for foreman</p> <p>12 positions?</p> <p>13 A. I don't know. That would not be my</p> <p>14 area.</p> <p>15 Q. But would it be fair to say to your</p> <p>16 knowledge there wasn't?</p> <p>17 A. To my knowledge.</p> <p>18 Q. Okay. And just so I understand your</p> <p>19 testimony, that was prior to 2008, because now you</p> <p>20 have this Internet --</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. Okay. How many -- and if you don't</p> <p>23 remember because it's been several years -- in</p> <p>24 2005 do you know how many foreman positions there</p>
	<p>50</p> <p>1 activity through payroll, so nothing was going out</p> <p>2 on the Internet. I -- I can't answer that</p> <p>3 question. I don't know.</p> <p>4 Q. So you don't know if jobs were posted</p> <p>5 in 2003, 2004 or 2005?</p> <p>6 A. Well, when you talk about "posting,"</p> <p>7 like, posted through the Internet?</p> <p>8 Q. No. I mean, you had testified they</p> <p>9 were posted at the office, the home office or the</p> <p>10 region's office and on the Internet. Now I'm</p> <p>11 asking you during 2003, 2004 and 2005, were job</p> <p>12 openings posted, albeit, were they put some place</p> <p>13 so an employee would have access to them?</p> <p>14 A. You're giving -- the years, I don't</p> <p>15 know what the years -- what the dates were. So if</p> <p>16 you're going to give me 2003, 2004, 2005, I don't</p> <p>17 know. We had a bulletin board in the front of the</p> <p>18 office where the -- you might call her the manager</p> <p>19 was putting postings internally in there. But</p> <p>20 that was not for construction, it was for</p> <p>21 internal.</p> <p>22 Q. What are you calling "internal"?</p> <p>23 A. Nonunion.</p> <p>24 Q. Nonunion positions or nonunion</p>		<p>52</p> <p>1 were at The Shelly Company?</p> <p>2 A. Were?</p> <p>3 Q. Yes.</p> <p>4 A. How many foremen do we have in two</p> <p>5 thousand --</p> <p>6 Q. And five.</p> <p>7 MR. KELLY: Are we talking companywide</p> <p>8 or Thornville or what are we talking about?</p> <p>9 Q. Well, this -- it's a nebulous issue.</p> <p>10 A. I don't monitor those numbers.</p> <p>11 Q. So you have no idea?</p> <p>12 A. I wouldn't know.</p> <p>13 Q. Okay.</p> <p>14 A. I don't look at those numbers.</p> <p>15 Q. Who would have been looking at those</p> <p>16 numbers in 2005?</p> <p>17 A. The individual division's VPs.</p> <p>18 Q. The VPs?</p> <p>19 A. Uh-huh.</p> <p>20 Q. Okay. All right. We've handed you</p> <p>21 what's been marked Plaintiff's Exhibit 2. If you</p> <p>22 could take a look at that document, please.</p> <p>23 A. I don't know what this is.</p> <p>24 Q. Okay. I'm going to ask you some</p>

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<p>1 questions about it. If you could just take a few 2 minutes to look at it. And if you've never seen 3 the document, that's fine.</p> <p>4 A. I've never seen this document.</p> <p>5 Q. You've never seen this document, okay.</p> <p>6 This is a State of Ohio Department of 7 Administrative Services EEO Division Construction 8 Compliance Review Report?</p> <p>9 MR. KELLY: Are you representing that 10 to us?</p> <p>11 MS. CUNNINGHAM: It's on the document. 12 If you would look at the top of the document, I'm 13 telling her what the document is.</p> <p>14 Q. And it's dated 2-20 of '03.</p> <p>15 MR. KELLY: I'm sorry. I understand 16 that's what the title of the document is there. 17 But are you representing for the record that 18 that's what it is? I mean --</p> <p>19 MS. CUNNINGHAM: It's my understanding 20 that's what it is. I wasn't there, I didn't 21 create it.</p> <p>22 MR. KELLY: You're testifying to it.</p> <p>23 MS. CUNNINGHAM: No. I'm telling her 24 what it is. She said she had no idea what it is.</p>	<p>53</p> <p>1 A. Not that I recall.</p> <p>2 Q. Okay. On the second page of that 3 document, it reflects that the review was 4 conducted at The Shelly Company on 2-20-03 at 5 10:30 a.m. The following persons were in 6 attendance: Candace Burke Gales and Stacy Wooten. 7 Does that refresh your recollection?</p> <p>8 A. I don't know what the date was.</p> <p>9 Q. Okay. So you're not sure if 2-20 of 10 '03 is the correct date?</p> <p>11 A. I have no clue without my file --</p> <p>12 Q. Okay.</p> <p>13 A. -- because I've never seen this.</p> <p>14 Q. Are you generally given copies of the 15 State of Ohio's Department of Administrative 16 Services Contract Compliance Review?</p> <p>17 A. We get a letter of compliance.</p> <p>18 Q. You just get a letter, you never get 19 the actual report?</p> <p>20 A. Right.</p> <p>21 Q. Okay. Would it be fair to say that you 22 would have given the information to Ms. Wooten to 23 complete this report just as you had given 24 information to Ms. Farnsworth with ODOT?</p>	55	
<p>1 I don't know if she didn't see that doc --</p> <p>2 A. I've never seen this.</p> <p>3 Q. Okay. That's fine.</p> <p>4 A. I read it. I don't know what it is.</p> <p>5 Q. Okay. All right. The review date is 6 2-20 of '03, and there's an EEO officer name of 7 Stacy Wooten. Do you know Ms. Wooten?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Do you recall her -- okay. Do 10 you recall meeting with Ms. Wooten in 2003 to do 11 the State of Ohio's compliance review?</p> <p>12 A. In 2003. I can testify that I have 13 talked to her. What date that I met with her, I 14 don't have any idea.</p> <p>15 Q. Okay.</p> <p>16 A. I'd have to go back and see my report.</p> <p>17 Q. Okay. That's fine.</p> <p>18 A. I've never seen this report.</p> <p>19 Q. Would it be fair to say, though, that 20 you met with Ms. Wooten at least once?</p> <p>21 A. Well --</p> <p>22 Q. I'm sorry. Was that yes?</p> <p>23 A. I would say once.</p> <p>24 Q. Did you meet with her more than once?</p>	<p>54</p> <p>1 A. Yes.</p> <p>2 Q. Okay. If you would turn to -- well, 3 these pages aren't numbered. Turn to page 7, 4 please.</p> <p>5 A. Affirmative action program?</p> <p>6 Q. No. The one that's in Section 4, 7 Company Personnel Operation, it's at the top.</p> <p>8 A. Okay.</p> <p>9 Q. Under 24 it says -- it identifies you 10 as the contact EEO officer.</p> <p>11 A. Yes, ma'am.</p> <p>12 Q. Okay. And No. 25 it says, "Does the 13 contractor maintain copies of each employee's 14 performance and other employee evaluations in 15 their personnel files?" And it's marked "yes." 16 Do you see that?</p> <p>17 A. I see it, yes.</p> <p>18 Q. Okay. That would not be a true --</p> <p>19 A. I didn't mark --</p> <p>20 Q. -- answer, correct?</p> <p>21 A. I didn't mark "yes."</p> <p>22 Q. I'm not saying that you marked it. But 23 that's not true, is it?</p> <p>24 A. This is 2003. Mark Shelly, no, that's</p>	56	

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<p>1 not a correct answer.</p> <p>2 Q. If you could turn to the third page</p> <p>3 from the end under Section 7.</p> <p>4 A. Employment Utilization Information?</p> <p>5 Q. Yes. Do you see you under No. 40,</p> <p>6 where you state, "Personnel files for all files</p> <p>7 were reviewed on site." And it's marked "yes."</p> <p>8 That would be -- that wouldn't be a true answer</p> <p>9 either, would it?</p> <p>10 A. I see it. I didn't mark it.</p> <p>11 Q. I'm not saying you marked it. I'm just</p> <p>12 saying it's not a true answer?</p> <p>13 A. That would be correct, yes.</p> <p>14 Q. Okay. So all you get from the State of</p> <p>15 Ohio DAS Department is a letter saying you're</p> <p>16 either in compliance or you're out of compliance?</p> <p>17 A. Yes, ma'am.</p> <p>18 Q. All right.</p> <p>19 - - - - -</p> <p>20 Thereupon, Deposition Exhibit 3 is marked</p> <p>21 for purposes of identification.</p> <p>22 - - - - -</p> <p>23 Q. Let's mark this as Exhibit 3. I'm</p> <p>24 handing you what's been marked Plaintiff's Exhibit</p>	57	<p>1 Q. Okay. So it would cover all of the</p> <p>2 construction projects?</p> <p>3 A. For that period of time.</p> <p>4 Q. Yeah, I understand.</p> <p>5 A. Federal.</p> <p>6 Q. I understand.</p> <p>7 A. So not all construction projects.</p> <p>8 Q. Only the federal construction projects,</p> <p>9 okay.</p> <p>10 Would it be fair to say the federal</p> <p>11 construction projects have foremen?</p> <p>12 A. All projects have foremen.</p> <p>13 Q. All projects, okay. That's why I was</p> <p>14 curious because this form under No. 3 where it</p> <p>15 says foremen, it doesn't have any numbers in that</p> <p>16 category.</p> <p>17 A. Okay. This report is pulled off of the</p> <p>18 payroll. Those numbers that you're asking for</p> <p>19 foremen are under management payroll, they do not</p> <p>20 show up in this particular report.</p> <p>21 Q. Okay. Well, under No. 2 supervisors it</p> <p>22 does show up.</p> <p>23 A. Supervisors are put in by hand because</p> <p>24 they are listed as supervisors, two per each</p>	59
<p>1 No. 3. If you would like to take a few minutes to</p> <p>2 look at that document. Did you complete this</p> <p>3 document?</p> <p>4 A. Yes, ma'am.</p> <p>5 Q. Explain this document to me because I</p> <p>6 don't understand it.</p> <p>7 A. It's an on-site construction employment</p> <p>8 data report for the period of July 30th, it's a</p> <p>9 PR1391. A PR1391 is a report that's filed to the</p> <p>10 federal government in Washington, D.C. It covers</p> <p>11 only the height of construction season, which is</p> <p>12 what the feds in Washington consider the height of</p> <p>13 construction season, which is one week in July</p> <p>14 that contains the 15th, as per the 23CFR.</p> <p>15 Q. Okay. Is this Shelly overall?</p> <p>16 A. No. It's for the height of</p> <p>17 construction season for one week only under the</p> <p>18 PR1391 regulation that covers the week with the</p> <p>19 15th pay period in it.</p> <p>20 Q. No. I understand that. But my</p> <p>21 question is: Do these statistics cover the entire</p> <p>22 Shelly Company or one of the divisions?</p> <p>23 A. It would have covered all work for that</p> <p>24 period of time.</p>	58	<p>1 division.</p> <p>2 Q. But you don't put the foremen in by</p> <p>3 hand?</p> <p>4 A. No, ma'am.</p> <p>5 Q. So the feds weren't told how many</p> <p>6 foremen were on the job or what their races were?</p> <p>7 A. For that period of time for that height</p> <p>8 of construction season.</p> <p>9 Q. Right.</p> <p>10 Would it be fair to say that that was</p> <p>11 not required is why it wasn't done?</p> <p>12 A. It's not asked for, so --</p> <p>13 Q. It's not asked for. But --</p> <p>14 A. So we don't give it to them.</p> <p>15 Q. -- you put the supervisors --</p> <p>16 A. Yes, ma'am.</p> <p>17 Q. I'm assuming all the supervisors were</p> <p>18 white, correct?</p> <p>19 MR. KELLY: I'm sorry. Are you asking</p> <p>20 if --</p> <p>21 Q. From this form, I'm assuming all the</p> <p>22 supervisors were white.</p> <p>23 A. It shows there that they are, yes,</p> <p>24 ma'am.</p>	60

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<p>1 - - - - -</p> <p>2 Thereupon, Deposition Exhibit 4 is marked</p> <p>3 for purposes of identification.</p> <p>4 - - - - -</p> <p>5 Q. I'm handing you what's been marked as</p> <p>6 Plaintiff's Exhibit No. 4. If you would take a</p> <p>7 few minutes and look at that document.</p> <p>8 Okay. Now this document says it's</p> <p>9 "Revised" at the top. Would it be fair to say</p> <p>10 that this is just a revision of Exhibit No. 3?</p> <p>11 A. For 2004, July 30th, this is Exhibit 1</p> <p>12 -- Exhibit 3 was part -- went into the review</p> <p>13 process, and it just -- I believe it had to be</p> <p>14 transcribed off of this report and put on their</p> <p>15 report.</p> <p>16 Q. Okay. Is that your signature at the</p> <p>17 bottom of Exhibit 4?</p> <p>18 A. Yes, ma'am.</p> <p>19 Q. Okay. And it -- same reason why</p> <p>20 foremen or, slash, women was not filled in? It</p> <p>21 wasn't hand entered.</p> <p>22 A. It was 2004, and I believe at that time</p> <p>23 it wasn't required.</p> <p>24 Q. Okay. What does that mean foremen,</p>	<p>61</p> <p>1 that mean they're in supervisory positions or does</p> <p>2 that mean they're actually just women in</p> <p>3 supervisory positions?</p> <p>4 MR. KELLY: I intended -- it's intended</p> <p>5 to mean some sort of non-offensive gender</p> <p>6 reference to foremen.</p> <p>7 MS. CUNNINGHAM: Oh, okay.</p> <p>8 MR. KELLY: Being it breaks out women</p> <p>9 separately, I would be pretty confident in that</p> <p>10 analysis.</p> <p>11 Q. Are you familiar with the individuals</p> <p>12 who were foremen in '04?</p> <p>13 A. I believe so.</p> <p>14 Q. Okay.</p> <p>15 - - - - -</p> <p>16 Thereupon, Deposition Exhibit 5 is marked</p> <p>17 for purposes of identification.</p> <p>18 - - - - -</p> <p>19 Q. I'm handing you what's been marked</p> <p>20 Plaintiff's Exhibit No. 5. Would you like to take</p> <p>21 a few minutes to look at it? No? You're familiar</p> <p>22 with it?</p> <p>23 A. Uh-huh.</p> <p>24 Q. Okay. Now, this says it's management</p>	63
<p>1 slash, women? Only women that are foremen or does</p> <p>2 it cover foremen and women?</p> <p>3 A. It would -- you break it down in the</p> <p>4 category, the total number and then whether they</p> <p>5 were women or not. And this form has, I believe,</p> <p>6 since been revised since 2004 to read something</p> <p>7 different also.</p> <p>8 Q. Okay. Just so I'm understanding, so</p> <p>9 foremen/women blank wasn't required, and it</p> <p>10 doesn't mean women that are foremen, it means</p> <p>11 either women or foremen?</p> <p>12 A. Well, you would have to ask ODOT about</p> <p>13 that.</p> <p>14 Q. No. I'm just trying to understand the</p> <p>15 form.</p> <p>16 A. We have trouble understanding them too.</p> <p>17 Q. All right.</p> <p>18 MR. KELLY: I would assume it's</p> <p>19 intended to be gender neutral language, foremen,</p> <p>20 forewomen.</p> <p>21 MS. CUNNINGHAM: Oh, no, it says</p> <p>22 foremen.</p> <p>23 MR. KELLY: Slash, women.</p> <p>24 MS. CUNNINGHAM: Oh, I see. But does</p>	<p>62</p> <p>1 training and the instructors are Paul, Gales and</p> <p>2 Nebbergall. Is Candace Gales -- that's you?</p> <p>3 A. Yes, ma'am.</p> <p>4 Q. And it's dated 4-16-04. Of these four</p> <p>5 pages, can you tell me which individuals were</p> <p>6 foremen and their races?</p> <p>7 A. Oh, no.</p> <p>8 Q. Oh, that you can't?</p> <p>9 A. No.</p> <p>10 Q. Okay. You're not familiar with who was</p> <p>11 a foreman in '04?</p> <p>12 A. I don't know all their names.</p> <p>13 Q. Oh, you only know them by faces?</p> <p>14 A. Faces.</p> <p>15 Q. So you don't know if Scott Cooperrider</p> <p>16 was a foreman?</p> <p>17 A. Scotty Cooperrider is a foreman.</p> <p>18 Q. What's his race?</p> <p>19 A. He's white.</p> <p>20 Q. Okay. Any other name you recognize on</p> <p>21 there that's a foreman and their race?</p> <p>22 A. Dale Trainer, I don't know whether he's</p> <p>23 a foreman or superintendent. He's white. He</p> <p>24 retired.</p>	64

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1	Q.	When did he retire?	65	1	-- I mean, a chief financial officer. Mark Cox,	67
2	A.	A couple years ago. I don't recall.		2	vice president, I think white. And Dan Montgomery	
3	Q.	Okay.		3	would have been the president. Off the top of my	
4	A.	Ed Wilson is a superintendent. He does		4	head, that's -- I don't know some of these	
5		call-outs. He's white. Richey Boring, foreman,		5	gentleman's title.	
6		white. Tony Barnes is the vice president, white.		6	Q. You don't know them?	
7	Q.	I'm sorry. He's the VP?		7	A. Some of these gentleman's titles.	
8	A.	He's the VP.		8	Q. Okay.	
9	Q.	How about Richard Boring?		9	A. If I haven't read their names, I don't	
10	A.	He's on here twice.		10	know what their titles are.	
11	Q.	Oh, Richey is the same as Richard?		11	Q. Okay. Would it be fair to say out of	
12		MR. SHARRETT: Son and father.		12	all the people on this list that the only	
13	A.	I don't know who the -- I don't know		13	minorities were Donald -- is it Maley?	
14		why he's on there twice. I don't know -- if I see		14	A. Maley.	
15		Richey Boring, I know Richey. I don't know		15	Q. Maley and Jeff Barnes?	
16		Richard.		16	A. I'm on there.	
17	Q.	Okay.		17	Q. Okay. You don't count, though. You're	
18	A.	Unless that's the surname for Dick, and		18	the instructor.	
19		he would be a foreman, white.		19	A. No, we weren't the instructors.	
20		This is 2004. Reagan Sharrett,		20	Q. Oh, it says instructor up here Paul,	
21		foreman.		21	Gales and Nebbergall. You didn't teach?	
22	Q.	Is he related to Rob Sharrett?		22	A. We were the management sponsoring the	
23	A.	Yes.		23	event. It was a Fred Pryor class.	
24	Q.	Son?		24	Q. Okay.	
1	A.	Brother.	66	1	A. Fred Pryor came in and conducted the	68
2	Q.	Brother.		2	class.	
3	A.	Kevin West, white, foreman. Donald		3	Q. Oh, it doesn't say that.	
4		Mayle, black, foreman.		4	A. They were hired by us to come in and do	
5	Q.	Hold on a second. You're going too		5	5 a management class. We were also part of the	
6		fast for me. Kevin West, where is this name?		6	6 audience, but we were the welcoming committee that	
7		7 stood there and said thank you for coming. Fred		7	7 Pryor taught the class, their representative. We	
8	A.	Three above page 3 above Donald Mayle.		8	8 were also part of the audience.	
9	Q.	Oh, okay. Jeremy West?		9	10 A. Okay. It doesn't say that. Sorry for	
10	A.	No. Kevin.		11	11 the misunderstanding.	
11	Q.	I'm sorry?		12	12 A. But that's what it was, that's --	
12	A.	Page 2 --		13	13 Q. That's --	
13	Q.	I'm on page 3.		14	14 A. -- why I put Fred Pryor down there, so	
14	A.	-- on the bottom.		15	15 we would know when we pulled these what happened	
15	Q.	I'm on page 3. Oh, okay. He's a		16	16 at that meeting. It was a Fred Pryor class, which	
16		foreman, he's white?		17	17 we had arranged over the Internet with Fred Pryor	
17	A.	Yes. And then Donald Mayle. Donnie		18	18 to come in and conduct these management classes.	
18		Mayle is the bottom one, black. Tim Anderson is		19	19 Q. Okay. So it would be fair to say out	
19		the superintendent.		20	20 of all the people listed on here including you	
20	Q.	Is he white?		21	21 there were three minorities?	
21	A.	Yes.		22	22 A. Yes, ma'am.	
22		Jeff Barnes, foreman, American Indian.		23	23 Q. Okay.	
23		Ben Koehler is the vice president. Ron Sharrett		24	24 A. To the best of my knowledge, unless I'm	
24		is a vice president. Doug Radabaugh is a chief ex				

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<p>1 missing somebody that I don't know.</p> <p>2 Q. Okay. Are you involved in The Shelly</p> <p>3 Company's affirmative action plan?</p> <p>4 A. I assist in putting it together.</p> <p>5 Q. All right. Is it one of your job</p> <p>6 duties to see that The Shelly Company complies</p> <p>7 with its affirmative action plan?</p> <p>8 A. Yes, ma'am.</p> <p>9 Q. Okay. Exhibit 6.</p> <p>10 - - - - -</p> <p>11 Thereupon, Deposition Exhibit 6 is marked</p> <p>12 for purposes of identification.</p> <p>13 - - - - -</p> <p>14 Q. I'm handing you what's been marked</p> <p>15 Plaintiff's Exhibit 6. Would you like to take a</p> <p>16 few minutes and look through that document?</p> <p>17 Would it be fair to say that one of the</p> <p>18 goals of the affirmative action plan is to promote</p> <p>19 without regard to race?</p> <p>20 A. Yes, ma'am.</p> <p>21 Q. Okay. In your opinion has Shelly</p> <p>22 Company met that goal?</p> <p>23 MR. KELLY: Objection.</p> <p>24 Q. You may answer.</p>	69	71
<p>1 A. It has been left up to upper management</p> <p>2 to comply with that part of the affirmative action</p> <p>3 plan, and if there's been an opening.</p> <p>4 Q. But the question was: In your opinion</p> <p>5 have they met the goals of the plan?</p> <p>6 MR. KELLY: Objection.</p> <p>7 A. Yes. I believe they've attempted to.</p> <p>8 Q. They've attempted to or have they met</p> <p>9 it?</p> <p>10 A. Uh-huh. I think they've met it.</p> <p>11 Q. How have they met it?</p> <p>12 A. Well, we do not discriminate. If</p> <p>13 there's an opening, I'm sure that the upper</p> <p>14 management has attempted to fill those positions</p> <p>15 with whoever the best qualified people were. I</p> <p>16 don't participate in that process.</p> <p>17 Q. And you've never discussed it with</p> <p>18 them?</p> <p>19 A. I have talked to the vice presidents</p> <p>20 about certain areas before, but I don't get into</p> <p>21 that area. If somebody comes to me, I will refer</p> <p>22 it to them; and I let them know every construction</p> <p>23 season that I will do that if somebody asks me</p> <p>24 about it.</p>	70	72

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<p>1 for it, like the people that are on this list, 2 hold a back-to-work meeting. Annual foreman's 3 meetings are held by upper management.</p> <p>4 Q. So it's not one of your job duties?</p> <p>5 A. And I don't attend those meetings 6 because they're at my back to work meeting with 7 all the other employees. There are two separate 8 meetings.</p> <p>9 Q. Okay. Let's mark this as Exhibit 7.</p> <p>10 - - - - -</p> <p>11 Thereupon, Deposition Exhibit 7 is marked 12 for purposes of identification.</p> <p>13 - - - - -</p> <p>14 Q. Have you seen this document before?</p> <p>15 A. Uh-huh.</p> <p>16 Q. Okay. Would it be correct to say that 17 that outlines your job duties?</p> <p>18 A. Yes, ma'am.</p> <p>19 Q. So we're halfway down the page where 20 it's got holds annual foreman's meetings back to 21 work meetings. It's -- you're saying that there 22 are two separate meetings, you don't handle the 23 foreman's meetings, or they're all combined?</p> <p>24 A. I would say that that "holds annual</p>	<p>1 You said that there's now a personnel 2 department and they've started keeping personnel 3 files. Is it your understanding they now have 4 personnel files on union employees?</p> <p>5 A. I -- no.</p> <p>6 Q. They still don't?</p> <p>7 A. They wouldn't have them on the union 8 people because the union's personnel file is at 9 the union.</p> <p>10 Q. Okay. So if a union employee comes to 11 the job site, there's a problem, whatever reason, 12 and they're fired, they're just fired and there's 13 no documentation reflecting that?</p> <p>14 A. Yes. The legal department would keep 15 that documentation.</p> <p>16 Q. So there's just documentation on being 17 fired, there's no documentation on being hired or 18 rates of pay or promotions or anything like that?</p> <p>19 A. We would have it in our payroll system.</p> <p>20 Q. You would just have the rates of pay in 21 the payroll system?</p> <p>22 A. Dates, times.</p> <p>23 Q. But any other documentation wouldn't 24 exist?</p>	75
<p>1 foreman's meetings back to work meetings" is a 2 sentence that needs to be corrected. The foremen 3 are at the manual back to work meeting.</p> <p>4 Q. Oh, okay. So you just --</p> <p>5 A. And there could be foremen that would 6 walk in the door and I wouldn't have any idea that 7 they're even foremen.</p> <p>8 Q. So there's no separate meeting for 9 foremen?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. When The Shelly Company has the 12 union send over an individual, do they fill out an 13 application?</p> <p>14 A. No.</p> <p>15 Q. Who fills out applications?</p> <p>16 A. The general workforce.</p> <p>17 Q. But not a union employee?</p> <p>18 A. They come from the union. They filled 19 out their application at the union.</p> <p>20 Q. Oh, okay. I'm --</p> <p>21 A. At the union hall, because we're --</p> <p>22 Q. I understand.</p> <p>23 A. Oh, okay.</p> <p>24 Q. I understand.</p>	<p>74</p> <p>1 MR. KELLY: Other than what she has 2 described to you.</p> <p>3 MS. CUNNINGHAM: Right.</p> <p>4 MR. KELLY: Again --</p> <p>5 Q. I just want to know what documentation 6 the company has on union employees. And it seems 7 you don't have any, other than if there's a 8 problem and they're terminated, you've got 9 probably one piece of paper or whatever --</p> <p>10 MR. KELLY: Other than what she has 11 already described to you.</p> <p>12 Q. Well, she hasn't described any other 13 for union employees that I understand.</p> <p>14 A. The union would have --</p> <p>15 Q. I mean payroll --</p> <p>16 A. -- a file, payroll --</p> <p>17 Q. I'm talking about what would go in a 18 personnel file. As I understand it, the payroll 19 would have all of the salary information --</p> <p>20 A. Right.</p> <p>21 Q. -- in the computer?</p> <p>22 A. Right, dates, termination dates.</p> <p>23 Q. Right. Just --</p> <p>24 A. Just promotional dates.</p>	76

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		77		79	
1	Q.	-- salary information?	1	A.	Yes.
2	A.	Salary changes.	2	Q.	Do you know when he became a foreman?
3	Q.	Right.	3	A.	No.
4	A.	And if you file a complaint, then we	4	Q.	David Gentil, is he a foreman or a
5		would create a file.	5		supervisor?
6	Q.	Oh, okay. So --	6	A.	He's a foreman.
7	A.	But that's through the legal	7	Q.	He's a foreman. He's Caucasian?
8		department.	8	A.	Yes.
9	Q.	Okay. So if I understand this, then,	9	Q.	Do you recall when he became a foreman?
10		the payroll department would have all information	10	A.	No.
11		regarding employees' rates of pay and promotion?	11	Q.	Lambert, is that a first or last name?
12	A.	That's what's pulled into those	12	A.	That would be Thomas.
13		reports, that's how the reports are generated.	13	Q.	Thomas, is he Caucasian?
14		Once they're promoted or become management,	14	A.	Yes.
15		they're not in the payroll system anymore.	15	Q.	When did he become a foreman?
16	Q.	But the payroll system should be able	16	A.	I don't know.
17		to track individuals from when they were hired,	17	Q.	James McManaway, is he Caucasian?
18		the rates of pay, whether or not they got a	18	A.	To the best of my knowledge, yes.
19		promotion, and the new rate of pay?	19	Q.	Do you know when he became a foreman?
20	A.	Yes, ma'am.	20	A.	No.
21	Q.	Would it also be able to track their	21	Q.	Shane Novark, is he Caucasian?
22		race?	22	A.	Yes.
23	A.	Yes. It comes out on that report you	23	Q.	Do you know when he became a foreman?
24		just gave me.	24	A.	No.

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1	Q.	Let's mark this as Exhibit 7.	1	Q.	Regan Sharrett, he's Caucasian?
2		MR. KELLY: 8.	2	A.	Yes.
3		THE REPORTER: 8.	3	Q.	Do you know when he became a foreman?
4		-----	4	A.	No.
5		Thereupon, Deposition Exhibit 8 is marked	5	Q.	Richey Boring, he's Caucasian?
6		for purposes of identification.	6	A.	Yes.
7		-----	7	Q.	Do you know when he became a foreman?
8	Q.	Have you seen this document before?	8	A.	No.
9	A.	Uh-huh. Yes, ma'am.	9	Q.	Mark Potts, is he Caucasian?
10	Q.	Are you familiar with it?	10	A.	Yes.
11		If you could turn to the fifth page.	11	Q.	Do you know when he became a foreman?
12	A.	This page?	12	A.	No.
13	Q.	Yes.	13	Q.	Explain this document, this whole group
14	A.	Okay.	14		of documents. Is this -- if you turn to the
15	Q.	In the column marked	15		previous page, it's got county and it looks like
16		Foreman/Supervisors, are you familiar with these	16		"Fair." Do you know what that stands for?
17		individuals?	17	A.	It would be Fairfield County.
18	A.	Yes.	18	Q.	Fairfield, Coshocton, I'm assuming?
19	Q.	Okay. Scott Cooperrider, we've	19	A.	Yes.
20		discussed him, he's Caucasian, correct?	20	Q.	And then is it Licking County?
21	A.	Yes, ma'am.	21	A.	Licking County.
22	Q.	Do you recall when he became a foreman?	22	Q.	Are those in the Thornville Division?
23	A.	Oh, I have no idea.	23	A.	Yes.
24	Q.	Okay. Dave Scott, is he Caucasian?	24	Q.	This is dated 2-8 of '05. Are these

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<p>1 all the projects that were in the Thornville 2 Division?</p> <p>3 A. With the review, I believe those are 4 the three projects that were targeted.</p> <p>5 Q. Oh, just targeted. So there are other 6 projects?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Do you know how many projects 9 there were during this time period?</p> <p>10 A. No.</p> <p>11 Q. Okay.</p> <p>12 - - - - -</p> <p>13 Thereupon, Deposition Exhibit 9 is marked 14 for purposes of identification.</p> <p>15 - - - - -</p> <p>16 Q. I'm handing you what's been marked 17 Plaintiff's Exhibit No. 9. Are you familiar with 18 this document?</p> <p>19 A. Yes.</p> <p>20 Q. Is this your signature on the second 21 page?</p> <p>22 A. Yes.</p> <p>23 Q. Does this mean that you created the 24 document?</p>	<p>81</p> <p>1 there?</p> <p>2 A. Right.</p> <p>3 Q. Okay. On the second page, the first 4 partial paragraph says, "We will -- I don't know 5 if you can -- if you found that. It says, "We 6 will continue our company and union programs to 7 train and upgrade minorities and females."</p> <p>8 What company programs are there to 9 train and upgrade minorities and females?</p> <p>10 A. Our on-the-job training program.</p> <p>11 Q. Is that it?</p> <p>12 A. Yes, because these people come from the 13 union.</p> <p>14 Q. Right. Those are the four slots we 15 talked about?</p> <p>16 A. Right.</p> <p>17 Q. There are no other programs?</p> <p>18 A. No.</p> <p>19 Q. Okay. The next paragraph reads, "We 20 will maintain a file of all applicants applying 21 for work with our company."</p> <p>22 To your knowledge, does the company 23 maintain a file of all applicants?</p> <p>24 A. In 2005?</p>	83
<p>1 A. No.</p> <p>2 Q. What does your signature mean?</p> <p>3 A. It means that I was part of the 4 process. Each year it has to be copied and mailed 5 to the various state and federal agencies. It was 6 actually written before I ever came to The Shelly 7 Company. And it just gets updated with 8 information year to year.</p> <p>9 Q. Oh, okay. And then they change it, 10 supplement to affirmative action plan, change the 11 years?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. At the bottom of the first page 14 it reads, "Where possible, we will participate in 15 programs such as 'Training Incentive Program' to 16 improve the management skills of minority and 17 women firms."</p> <p>18 Does this mean you will only work -- 19 The Shelly Company works only to improve the 20 management skills of minority and women firms or 21 employees?</p> <p>22 A. They're subcontractors that we're 23 referring to.</p> <p>24 Q. So you are talking about subcontractors</p>	<p>82</p> <p>1 Q. Yes.</p> <p>2 A. No, we weren't.</p> <p>3 Q. No. Okay.</p> <p>4 MR. KELLY: Thank you.</p> <p>5 - - - - -</p> <p>6 Thereupon, Deposition Exhibit 10 is marked 7 for purposes of identification.</p> <p>8 - - - - -</p> <p>9 Q. I'm handing you what's been marked as 10 Plaintiff's Exhibit No. 10. And this is an e-mail 11 and it's got from Beth Mowrey to, and there's a 12 number of people and your name is mentioned in 13 there. The subject is a Draft Agenda for the 2005 14 foreman's meeting. Did you recall that 2005 15 foreman's meeting?</p> <p>16 A. This e-mail was written in 2004. I 17 don't have a clue.</p> <p>18 Q. I'm sorry. 2004. You don't recall -- 19 was there a -- oh, I see. This is the same 20 foreman's meeting we discussed, it's that large 21 meeting, there's still no separate meeting?</p> <p>22 A. There is a back-to-work meeting where 23 all employees and the foremen attend per each 24 division. And then the vice presidents have their</p>	84

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<p>1 own foreman's meeting per their divisions.</p> <p>2 Q. So this was one of the VPs foreman's</p> <p>3 meetings, not yours?</p> <p>4 A. Based on the date of 2004, I'd have to</p> <p>5 go back and look at my notes to see if it was an</p> <p>6 actual foreman's meeting or it was an all out</p> <p>7 employees back to work.</p> <p>8 Q. Okay. Where it says "to" and all of</p> <p>9 these people are copied, are any of those people</p> <p>10 in there foremen?</p> <p>11 A. No.</p> <p>12 Q. Are they all VPs?</p> <p>13 A. No.</p> <p>14 Q. We know who Dan Montgomery and Paul</p> <p>15 Rice are. What about Jim Tharp, I think we've</p> <p>16 discussed him, too, already today, haven't we?</p> <p>17 A. No. No.</p> <p>18 Q. No, we haven't. What position is Jim</p> <p>19 Tharp in?</p> <p>20 A. He used to be the vice president of the</p> <p>21 Cincinnati Division, which is now -- it no longer</p> <p>22 exists. And I believe he's the vice president of</p> <p>23 liquid.</p> <p>24 Q. Okay. What about Paul, is it,</p>	85	<p>1 interoffice report that was written and the</p> <p>2 numbers come up on my screen from payroll.</p> <p>3 Q. Okay. When it's got under the number</p> <p>4 of employees, it doesn't have a section for --</p> <p>5 unless it's under officials and managers for</p> <p>6 foremen. Are foremen included in the officials</p> <p>7 and managers box?</p> <p>8 A. I need to explain this report.</p> <p>9 Q. Okay. Go ahead.</p> <p>10 A. Because this is not the data that</p> <p>11 you're looking at.</p> <p>12 Q. Oh, okay.</p> <p>13 A. This is 162.</p> <p>14 Q. Oh, okay. Explain.</p> <p>15 A. This report is normally only done for</p> <p>16 cities and where we have private work, and they</p> <p>17 require you list officials, managers,</p> <p>18 professionals, similar to the EEO1 report. We</p> <p>19 wrote this report internally to give cities such</p> <p>20 as City of Cambridge, City of Zanesville, the City</p> <p>21 of Toledo that data because they would not accept</p> <p>22 the federal and the state required reports, so we</p> <p>23 created our own report. These numbers are coming</p> <p>24 from part of construction and part of the plants</p>	87
<p>1 Prottengeier?</p> <p>2 A. Paul Prottengeier.</p> <p>3 Q. Prottengeier?</p> <p>4 A. He is -- I don't know Paul's job title.</p> <p>5 Q. Are these all upper level people?</p> <p>6 A. Yes.</p> <p>7 Q. Higher than foreman?</p> <p>8 A. Yes.</p> <p>9 Q. Okay.</p> <p>10 - - - -</p> <p>11 Thereupon, Deposition Exhibit 11 is marked</p> <p>12 for purposes of identification.</p> <p>13 - - - -</p> <p>14 MR. KELLY: Thank you.</p> <p>15 Q. I'm handing you what's been marked</p> <p>16 Plaintiff's Exhibit No. 11. This is a City</p> <p>17 Contract Compliance Review Form. Have you ever</p> <p>18 seen this form before?</p> <p>19 A. I -- yes.</p> <p>20 Q. Okay. Did you enter all the figures or</p> <p>21 provide the numbers for the first page for the</p> <p>22 statistics, or did you just give them to the</p> <p>23 compliance officer and they prepared all of this?</p> <p>24 A. We contact payroll, this is a report,</p>	86	<p>1 in the quarries that furnish the material that go</p> <p>2 to the jobs. So the numbers will be skewed from</p> <p>3 the official final report, because that's not</p> <p>4 where the data comes from.</p> <p>5 Q. Okay. But would it be fair to say that</p> <p>6 the foremen are included in officials and</p> <p>7 managers?</p> <p>8 A. Yes, it would. But it's coming from</p> <p>9 also the plants' and the quarries' operations,</p> <p>10 which is a different payroll. And --</p> <p>11 Q. Are you talking -- plants and quarries</p> <p>12 then be a different part of Shelly?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. So it's not just construction?</p> <p>15 A. Yes, ma'am.</p> <p>16 Q. Okay. So would it be fair to say that</p> <p>17 the numbers would be higher than just for</p> <p>18 construction or either the same?</p> <p>19 A. These numbers could be lower.</p> <p>20 Q. They could be lower?</p> <p>21 A. Depending on the time period of -- that</p> <p>22 it was requested.</p> <p>23 Q. Okay.</p> <p>24 A. Because the majority workforce is</p>	88

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<p>1 construction.</p> <p>2 Q. Right. So is it your testimony, then, 3 that the numbers here, they're skewed, is it that 4 they're not accurate as far as construction?</p> <p>5 A. Yes.</p> <p>6 Q. Okay.</p> <p>7 - - - -</p> <p>8 Thereupon, Deposition Exhibit 12 is marked 9 for purposes of identification.</p> <p>10 - - - -</p> <p>11 Q. I'm handing you what's been marked 12 Plaintiff's Exhibit No. 12. Would it be fair to 13 say that the numbers are skewed on that document 14 also?</p> <p>15 A. Yes.</p> <p>16 Q. Okay.</p> <p>17 - - - -</p> <p>18 Thereupon, Deposition Exhibit 13 is marked 19 for purposes of identification.</p> <p>20 - - - -</p> <p>21 MR. KELLY: Thank you.</p> <p>22 Q. I'm handing you what's been marked 23 Plaintiff's Exhibit No. 13. Are you familiar with 24 this form?</p>	<p>89</p> <p>1 Q. Well, if I had it, I'd let you see it.</p> <p>2 How's that? Let's see. Here we go. Let's do 3 2004. Let's mark this.</p> <p>4 - - - -</p> <p>5 Thereupon, Deposition Exhibit 14 is marked 6 for purposes of identification.</p> <p>7 - - - -</p> <p>8 Q. I'm handing you what's been marked 9 Plaintiff's Exhibit number 14. Did you prepare 10 this document?</p> <p>11 A. Yes.</p> <p>12 Q. Explain this document to me.</p> <p>13 A. It's the Input 29 report for 2004 from 14 January 1, 2004 to December 30th for 2004. It 15 only covers all variable accounts for the 16 Thornville Division, and it covers all work under 17 the pay period of 1 -- under the payroll of 161.</p> <p>18 Q. What's the payroll of 161?</p> <p>19 A. Construction.</p> <p>20 Q. Okay. So it's all the payroll of 161.</p> <p>21 What do you mean by "all variables"?</p> <p>22 A. Everything that's charged to 23 construction.</p> <p>24 Q. Oh, okay.</p>	<p>91</p>
<p>1 A. Yes. But where's page 1 and 2?</p> <p>2 Q. I don't know. This is the way I was 3 provided unless -- maybe Bates stamped page 81 and 4 82. I don't know.</p> <p>5 Anyway, did you prepare these figures?</p> <p>6 A. If I saw page 1 and 2, I could say I 7 did.</p> <p>8 Q. These were copied in the way that they 9 were provided, perhaps there was a mistake. But 10 so -- but you can't say if you prepared them or 11 not, you've never seen it?</p> <p>12 A. I see all these reports.</p> <p>13 Q. Okay.</p> <p>14 A. I need to see page 1 and 2.</p> <p>15 Q. Okay. Did you prepare it, though? Do 16 you mean reports like this?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. All right. Are you familiar 19 with any of the projects that are on here?</p> <p>20 A. I push a button and it tells me.</p> <p>21 Q. And these were for the Thornville 22 Division, correct?</p> <p>23 A. No. Is says all variables. I need to 24 see page 1 and 2.</p>	<p>90</p> <p>1 Q. All right. So is it fair to say that 2 during this time period the Thornville Division 3 had this many contracts?</p> <p>4 A. What's listed, these would be all the 5 contracts that were awarded to Thornville for that 6 period of 2004.</p> <p>7 Q. Okay.</p> <p>8 - - - -</p> <p>9 Thereupon, Deposition Exhibit 15 is marked 10 for purposes of identification.</p> <p>11 - - - -</p> <p>12 Q. I'm handing you what's been marked 13 Plaintiff's Exhibit No. 15.</p> <p>14 A. It's the -- again, it's the Input 29 15 from January 1 until December 30th, '05, all 16 variable Thornville paving for all work under 161.</p> <p>17 Q. Okay. So it would be accurate to say 18 that this reflects the number of contracts that 19 Shelly had during the time period in the 20 construction?</p> <p>21 A. For Thornville.</p> <p>22 Q. For Thornville?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Let's take a break and go over</p>	<p>92</p>

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1 everything.
 2 (A short recess is taken.)
 3 MR. KELLY: You had asked a question
 4 about Plaintiff's Exhibit 9.
 5 MS. CUNNINGHAM: Okay. Hold on a sec.
 6 Let's go back to 9. Okay.
 7 MR. KELLY: There's a question on
 8 page 2 about maintaining a file of all applicants
 9 applying for work.
 10 MS. CUNNINGHAM: Uh-huh.
 11 MR. KELLY: And I -- I don't want to
 12 speak for Candace. I think there's a distinction
 13 between maintaining a file on each specific
 14 applicant and a file about applicants with data
 15 generally. But I -- I don't -- I'm, obviously,
 16 not to testify here. I think there was some
 17 confusion about it. And if you want to ask
 18 Candace about it while she's here, it would
 19 probably be good so you don't -- you're not
 20 surprised if you get an affidavit down the road.
 21 Q. Okay. Ms. Gales --
 22 MR. KELLY: We can do it either way.
 23 I'm trying to do it as a favor to you.
 24 MS. CUNNINGHAM: I understand. I would

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 1 Q. Okay. So if one walks in -- this was
 2 prior to '06 -- fills out an application, they
 3 would give it to the secretary?
 4 A. Receptionist, whoever gave them the
 5 application. It's the lady who sits there.
 6 Q. Right. Give them the application, they
 7 would fill it out, give it back to her. She would
 8 put it in her file?
 9 A. Right.
 10 Q. And there would be a tear-off section
 11 that would be sent to your office that would
 12 reflect the --
 13 A. Race.
 14 Q. -- race?
 15 A. OCRC requires you to do that in Ohio.
 16 Q. Okay. So did this secretary --
 17 secretary's files or receptionist's files of
 18 applicants, is that maintained?
 19 A. Not now, no. Because we have a
 20 different process.
 21 Q. What about then, though? I mean, if
 22 they --
 23 A. That was kept there in case anybody --
 24 if you found you needed a secretary or a part-time

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 1 rather for her to explain.
 2 A. When people walk into the office prior
 3 to the HR department being formed, the
 4 receptionist would just have them fill out an
 5 application, and it would just go, if there was no
 6 openings, into the file and -- which would be her
 7 file just at the front desk. And the supervisor
 8 in that department would be notified, oh, by the
 9 way, I have a woman who's interested in a
 10 secretarial job if you ever have one open. But we
 11 never kept a file on, like, take this person's
 12 file and create a file in the HR department or --
 13 Q. Just because --
 14 A. To be kept -- we just kept the
 15 application.
 16 Q. Okay. I understand that.
 17 A. And then the tear off, the confidential
 18 sheet, would have been put in the book in my file
 19 which are kept for three years.
 20 Q. What did you mean, the tear off
 21 confidential file?
 22 A. The -- well, the way you identify your
 23 race and sex, that's never kept with the
 24 application.

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 1 person for six weeks or eight weeks, you would go
 2 to that file and see if you had anybody in there
 3 that was looking for a job or qualified for that
 4 part-time position or whatever.
 5 Q. How long were they kept?
 6 A. To be honest about it, I don't know.
 7 Q. Okay. But they stuck the applications
 8 in a secretary's file --
 9 A. Right.
 10 Q. -- somewhere?
 11 A. If you want to call it a file, it was
 12 just a notebook.
 13 Q. Or a notebook, whatever you want to
 14 call it.
 15 A. Uh-huh.
 16 Q. So that was kept, but you don't know
 17 how long they kept it?
 18 A. No.
 19 Q. Or what happened to it?
 20 A. No.
 21 Q. Okay. Let's go off the record a
 22 second?
 23 (A short recess is taken.)
 24 - - - - -

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<p>1 Thereupon, Deposition Exhibit 16 is marked 2 for purposes of identification. 3 - - - - - 4 Q. I'm handing you what's been marked as 5 Exhibit No. 16. Have you seen this document 6 before? 7 A. Yes. 8 Q. Okay. Is this your signature? 9 A. Yes. 10 Q. It's dated 9-1-04? 11 A. Yes. 12 Q. Tell me what this document reflects. 13 A. It's an EEO1 report that is supposed to 14 reflect the overall numbers statewide for The 15 Shelly Company. 16 Q. Okay. This document -- and correct me 17 if I'm wrong -- does not reflect foremen, correct? 18 A. It does not reflect the company's 19 numbers at all. 20 Q. What do you mean? Explain. 21 A. In 2005 and 2004 going into 2005, FHWA 22 in Washington, D.C. decided that the EEO1 reports 23 were not reflecting the data statewide for 24 contractors in the State of Ohio, so all the</p>	<p>97</p> <p>1 Q. Okay. But on September the 1st of '04, 2 these were the correct numbers for The Shelly 3 Company, correct? 4 A. This is what we polled. But we found 5 that they weren't polling all the numbers based on 6 all the divisions. Are we polling Thornville? 7 Did they poll Cleveland? Did they poll Columbus? 8 Did we poll Findlay? At this time, I can't 9 accurately say, because we found out the polls 10 were incorrect. 11 Q. Would that make all of the figures for 12 '04 incorrect or just this document? 13 A. Just this document because of the 14 status layout. With officials, managers, 15 professional, sales workers, your clerical staff, 16 normally those people are not polled when you poll 17 construction numbers. 18 Q. Right. 19 A. You poll the craft workers and the 20 operators and laborers. 21 Q. Right. 22 A. Those workers are probably more correct 23 than the above-named occupations. 24 Q. Oh, okay. So that's where you have</p>	99
<p>1 reports were basically pulled and revamped to give 2 us a new process and procedure. These reports 3 were considered, I believe, at the time null and 4 void. And we had to go to a new process because 5 our data wasn't polling the correct information. 6 So in 2005 and 2006, The Shelly Company along with 7 all contractors in the State of Ohio received new 8 regulations and rules on polling data for the EEO1 9 reports. They're now polled by individual 10 addresses, which include all the plants and 11 quarries and your construction units together. 12 And I would say that this 2004 data is not 13 reflective of our numbers in any way, shape and 14 form. 15 Q. Why is this? 16 A. Because we weren't polling the correct 17 numbers I guess the feds wanted to be polled. It 18 comes out of our computer system. The programs 19 had to be all rewritten and revamped, and it's 20 done completely different now. I think if you 21 would look at an EEO -- this EEO1 report based on 22 a Input 29 or a CR2 or even if I polled the 23 numbers from my cities of construction reports, it 24 would give you completely different data.</p>	<p>98</p> <p>1 questions, office and clerical sales workers, 2 professionals, officials and managers? 3 A. Yes, ma'am, because of the codes. 4 Q. Would foremen be considered managers? 5 A. Yes. 6 Q. So according to this form, it appears 7 there's one black official and manager, assuming 8 these figures are correct? 9 MR. KELLY: Which, obviously, we've 10 established is not something you should assume. 11 MS. CUNNINGHAM: Well, I'm just asking 12 her. 13 MR. KELLY: Well, she has told you the 14 numbers are not correct. 15 MS. CUNNINGHAM: Is that a one? I'm 16 just asking her. 17 Q. So you don't think that the numbers for 18 the officials and managers are correct? 19 A. No, ma'am. 20 Q. I mean, I understand the clericals -- 21 A. Anything above the craft workers I 22 don't believe is correct, based on the numbers and 23 the codes that had to be polled. 24 Q. So you did not know how many officials</p>	100

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<p>1 and managers were in the company on September the 2 1st of '04?</p> <p>3 A. The construction workforce is polled by 4 a code called 161.</p> <p>5 Q. Uh-huh.</p> <p>6 A. Just like the plants are polled by code 7 162. And then managers, officials, anybody that 8 holds a management level is polled from management 9 payroll, that is done by hand because of the 10 confidentiality. And now you take all those 11 figures and attempt to add them together with the 12 computer system, it wasn't being done properly.</p> <p>13 Q. Do you have a corrected form?</p> <p>14 A. Not for 2004.</p> <p>15 Q. Okay. So is it your testimony that 16 incorrect figures were submitted to the state and 17 federal government and those were never corrected?</p> <p>18 A. It wasn't reported to the state/ it was 19 reported to the feds.</p> <p>20 Q. Okay. So it was reported to the feds 21 and it was incorrect and it was never corrected in 22 '04?</p> <p>23 A. No, it was corrected the following year 24 and brought up to date.</p>	<p>101 1 know. 2 Q. Okay. 3 A. I couldn't do it. 4 Q. Would you check and then get back with 5 your counsel on providing the correct figures for 6 '04? 7 A. On the EEO1 report? 8 Q. Yes. 9 A. Sure. 10 Q. Okay. I have no further questions. 11 Thank you for coming in. 12 A. You're quite welcome. 13 (Signature is reserved.) 14 - - - - - 15 Thereupon, the foregoing proceedings 16 concluded at 11:49 a.m. 17 - - - - - 18 19 20 21 22 23 24</p>
<p>102 1 Q. Oh, okay. But '04 -- 2 A. And the forms are even -- was recharged 3 for last year for 2008. We have a brand-new 4 report coming out this year. 5 Q. No, I understand that. So it's your 6 testimony that the figures given to the feds for 7 '04 were incorrect? 8 A. For the office and the clerical and 9 above. 10 Q. Right. 11 A. The craft workers, the operators and 12 the laborers are probably as close as you're going 13 to get. 14 Q. Okay. Do you have any form for '04 15 that correctly reflects the stats on the officials 16 and managers? 17 A. Not with me today. 18 Q. Can The Shelly Company get them? 19 A. Based on the revamping of this report, 20 no. 21 Q. No. So why were they taken out of the 22 computer? I don't understand. If you -- 23 A. I'm not a computer person. I -- I'm 24 going to say no, but maybe they could. I don't</p>	<p>104 1 State of Ohio : C E R T I F I C A T E 2 County of Franklin: SS 3 I, Stacy M. Upp, a Notary Public in and for the 4 State of Ohio, certify that Candace Burke Gales was 5 by me duly sworn to testify to the whole truth in 6 the cause aforesaid; testimony then given was 7 reduced to stenotype in the presence of said 8 witness, afterwards transcribed by me; the 9 foregoing is a true record of the testimony so 10 given; and this deposition was taken at the time 11 and place specified on the title page. 12 Pursuant to Rule 30(e) of the Fed. R. Civ. P., 13 the witness and/or the parties have not waived 14 review of the deposition transcript. 15 I certify I am not a relative, employee, 16 attorney or counsel of any of the parties hereto, 17 and further I am not a relative or employee of any 18 attorney or counsel employed by the parties hereto, 19 or financially interested in the action. 20 IN WITNESS WHEREOF, I have hereunto set my hand 21 and affixed my seal of office at Columbus, Ohio, on 22 _____, 2008. 23 _____ 24 Stacy M. Upp, Notary Public - State of Ohio</p>

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Witness Errata and Signature Sheet

Spectrum Reporting LLC		Correction or Change Reason
Code	333 East Stewart Avenue	1 - Misspelling 2 - Word
Omitted	Columbus, Ohio 43206	3 - Wrong Word 4 -
Clarification	Phone - 614-444-1000 Fax - 614-444-3340	5 - Other Correction (Please explain)

I, Candace Burke Gales, have read the entire transcript of my deposition taken in this matter, or the same has been read to me. I request that the changes noted on my errata sheet(s) be entered into the record for the reasons indicated.

Date _____ Signature _____

The witness has failed to sign her deposition within the time allowed.
Date _____ Signature _____

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